"REPORTABLE"

* **HIGH COURT OF DELHI AT NEW DELHI**

\+ **OMP No. 471/2007 & IA No. 9626/2007**

Date of decision : December 17, 2007

Sh. Satinder Narayan Singh ..... Petitioner

! Through : Mr. J.M. Sabharwal, Sr.Advocate
Ms. Geetanjali Chaurasia,Adv.
Mr. S.K. Sabharwal, Advocate
Ms. Payal Shrivastava, Advocate

Versus

$ Indian Labour Cooperative Society Ltd. & Ors. ..... RESPONDENTS

^ Through : Mr. Vivek Singh, Advocate
for respondents No. 1 & 2.
Mr. Somdutt Kaushik, Advocate
for respondent No. 3.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

(1) Whether reporters of local paper may be allowed to see the judgment?

(2) To be referred to the reporter or not? Yes

(3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J. (Oral)

1. Present objection petition has been filed under section 27 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "Act") by the petitioner as dispute inter se the parties is pending adjudication before the sole arbitrator Dr.V.K. Aggarwal. During the proceedings

present petitioner filed an application for summoning of two witnesses, namely, Chief Executive, Indian Labour Cooperative Society Ltd. and Shri R.S. Nehra, Ex-Chairman, Indian Labour Cooperative Society Ltd. However, vide order dated 18th May 2007, the sole arbitrator allowed the examination of Chief Executive of Indian Labour Cooperative Society but dis-allowed the petitioner from examining Shri R.S. Nehra with the observations that he is not a relevant witness and fixed the matter for 4th and 5th June 2007 for examination-in-chief of the Chief Executive of Indian Labour Cooperative Society. According to the petitioner Shri R.S. Nehra, Ex-Chairman is a relevant witness and therefore he moved another application for examination of Shri R.S. Nehra along with six other witnesses, namely, Dr. N.P. Sharma, Shri Narender Singh, Shri Vinod Kumar Sherawat, Shri Arun Shokeen, Shri P.D. Lohcheb and Shri Kushal K. Sharma. However, this application was dismissed by the sole arbitrator holding that the application was without merit and the matter was fixed for final arguments for 25th August, 2007. This has resulted into filing of the present petition under section 27 of the Act before this court.

2. I have heard learned counsel for the parties in detail and

have carefully perused the record.

3. Section 27 of the Act permits the court assistance in taking evidence if the arbitral tribunal or a party with the approval of the arbitral tribunal applies to the court for assistance in taking evidence. In the present case, the petitioner has not obtained the approval of the arbitral tribunal before moving the court seeking its assistance for taking evidence by invocation of section 27 of the Act. Therefore, the application as filed is not sustainable.

4. The Act is absolute silent about the procedure or the remedy which may be available to a party if the arbitral tribunal refuses to examine the witnesses of a party holding that they are not relevant for the proper disposal of the dispute inter se the parties pending adjudication before him. Therefore, the only remedy available to the petitioner is to file objections under section 34 of the Act, if on pronouncement of an award, he is of the view that the arbitrator has not adjudicated upon the disputes under reference in accordance with law and procedure.

5. In fact, the present application is nothing but an appeal against the orders of the sole arbitrator dated 18th May,

2007 and 23rd July, 2007.

6. By virtue of section 37 of the Act, the aggrieved party has the right to file an appeal against the order of arbitrator (a) granting or refusing to grant any measure under section 9, (b) setting aside or refusing to set aside an arbitral award under section 34; (c) accepting the plea referred to sub-section (2) or sub-section (3) of section 16; or (d) granting or refusing to grant an interim measure under section 17. No appeal is permitted against the order passed by an arbitrator declining the request of a party to examine its witnesses for the reason that the arbitrator found them as irrelevant for the purposes of adjudication of the disputes inter se the parties.

7. By way of this objection petition, the petitioner has not sought the assistance of this court in examining the witnesses. Rather he has sought directions for setting aside of the order dated 18.05.2007 and 23.07.2007 and for allowing the application of the petitioner dated 18th July, 2007 which was dismissed by the arbitrator on 23.07.2007. Therefore, the relief claimed by the petitioner is a relief which could be claimed only in an appeal.

8. Learned counsel for the petitioner has referred to **"Lalit Madhan** Vs. **The Building Committee, Council of Institute of Company Secretaries of India & Anr., AIR 1995 Delhi 180"**. However, the said case pertain to the arbitral proceedings under the Arbitration Act, 1940 which has been drastically amended by way of the present provision contains under section 27 of the Act.

9. In the said case the arbitrator had dis-allowed the request of the petitioner for moving the court for taking the summons to the witnesses who had already been allowed to be examined. This is not the case before this court in the present petition.

10. Similarly in **'Harinarayan G. Bajaj** Vs. **Sharedeal Financial Consultants Pvt. Ltd. & Anr., 2003(2) Arb. LR 359 (Bombay)**", the petitioner made an application during the course of arbitral proceedings for assistance of the court in taking evidence. This application was rejected by the Tribunal. Under these circumstances, it was observed that on rejection of the application under section 27 of the Act, the petitioner had the option to challenge the said order.

11. As already pointed out above, no such application was moved by the petitioner before the sole arbitrator for seeking assistance of the court for examination of the witnesses. Instead second application was moved for examining of the witnesses rather the additional evidence, which was rejected.

12. The arbitrator has already completed the proceedings and closed the arguments of the parties as they failed to address their respective arguments on their claims and objections vide his order dated 11th December, 2007 and permitted the parties to file their written submission within two weeks.

13. Therefore, I find no merit in the application, the same is dismissed. Petitioner is at liberty to file objections under section 34 of the Act if he is aggrieved of the award which is likely to be pronounced by the sole arbitrator.

14. File be consigned to record room.

December 17, 2007 **ARUNA SURESH**
vk **(JUDGE)**